

2021 CAPITAL LITIGATION CONFERENCE: DELVING INTO DEFENSE EXPERTS

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Handling Suspects' Claims of Insanity During Interrogation

September 4, 2018 • by Steven E. Pitt



The primary purpose of interview and interrogation is to secure the suspect's narrative about their alleged role in the offense. (Photo: Getty Images)

Editor's Note: The principal author of this article, Arizona-based forensic psychiatrist Dr. Steven E. Pitt, was murdered in late May. He was targeted by one of the subjects he had evaluated. That subject, Dwight Lamon Jones, blamed numerous people for his divorce, including Pitt. Jones killed six people in a two-day rampage in Scottsdale. Then when tracked down by police, he exchanged fire with officers before taking his own life. Dr. Pitt frequently assisted Phoenix-area law enforcement. Earlier in his career he consulted on the Columbine High School Massacre and the JonBenet Ramsey murder.

Although rarely raised and even more rarely successful, the insanity defense can present significant challenges for law enforcement and attorneys alike. In most cases, issues related to a defendant's mental state at the time of the offense are touched upon obliquely during a trial on the merits and during the penalty phase, typically in an effort to mitigate his or her sentence. But the defendant's mental state and/or mental health history is often addressed in great detail.

An essential element to the outcome of a mental state defense is the information gathered by those persons charged with interviewing and/or interrogating the suspect. The goals of interview and interrogation, while different, share some overlapping themes. The primary purpose is to elicit specific and accurate information about the individual, particularly with respect to his or her thinking and/or motivation and behavior at the time of the offense. The role of law enforcement in securing the suspect's narrative about their alleged role in the offense cannot be overemphasized. To this end, critical information should be obtained by law enforcement long before a defendant comes into contact with a psychiatric or psychological evaluator. Whether an investigator is trying to extract a confession directly from the suspect or is gathering information from collateral sources, every effort should be made to obtain as much information as possible about a suspect's state of mind proximal to the time of the offense.

The authors have all worked in and/or consulted to a homicide unit and have developed a practical tool to aid investigators in gathering information about a suspect's mental state at the time of an offense.

There is no substitute for a thorough and objective interrogation that gets to the truth. To this end, we believe that our instrument, the Pitt, Nelson, Chapman, Lamoureux Interview Schedule (PNCLIS), will provide law enforcement personnel with a useful strategy to memorialize their observations regarding a defendant's mental state at the time of the offense.

Using the mnemonic "INSANITY," PNCLIS (pronounced "Pin-clis") incorporates eight essential elements to assist law enforcement with collecting and documenting information about a suspect's thought processes at and around the time of an offense.



LEOs can use the eight elements of PNCLIS to conduct observations about a suspect's mental state at the time of an offense. (Photo: Getty Images)

1) INTENT. Querying a suspect about his or her intent at the time he or she committed the offense is critical. By inquiring about intent, invaluable information is obtained about a suspect's mental state at the time of the offense. Whether the suspect had the requisite mens rea (guilt) when he or she committed the offense will help ascertain if a mental state defense will be a viable option at the time of trial.

2) KNOWING. A suspect's ability or inability to appreciate the wrongfulness of his or her conduct at the time of the offense is another key component of a mental state defense. As such, this line of questioning is designed to explore what the suspect knew when he or she committed the offense and, more specifically, whether the suspect knew that his or her actions were wrong when they committed the offense.

3) PSYCHIATRIC HISTORY. Asking suspects about whether they have a psychiatric history and to what extent (if any) they received psychiatric treatment are also very helpful lines of questioning. Additional areas of inquiry include learning whether the suspect has ever been psychiatrically hospitalized voluntarily or involuntarily, given a psychiatric diagnosis, and/or treated with psychotropic medications.

4) ALCOHOL AND SUBSTANCE USE HISTORY. Information about a suspect's past and recent substance use, especially during the days, hours, and minutes leading up to the commission of the offense, is of paramount importance to determining the viability of a potential mental state defense. In virtually every jurisdiction in the United States that has an insanity statute, a "mental disease or defect" does not include conditions that result from acute voluntary intoxication or withdrawal from alcohol or drugs. Hence, a detailed inquiry regarding the suspect's recent and past substance use history is an essential piece of information to secure.

5) NOISES. Many persons with a serious mental illness suffer from perceptual disturbances such as hearing voices or noises. Such claims are also often made by persons attempting to feign mental illness. Asking suspects early on about whether they are experiencing, or have experienced, any perceptual disturbances will be of tremendous benefit toward a later mental state evaluation. Use open-ended questions such as:

- "Do you ever hear things that other people don't hear?"
- "Do you ever see things that other people don't see?"
- "Have you ever experienced any unusual perceptions?"
- "Did you experience any unusual perceptions prior, during, or following the offense?"

The answers to these questions will help ascertain if the suspect has a legitimate history of suffering from hallucinations. When confronted with a suspect who is endorsing a history of suffering from hallucinations, it is important that the investigator ask follow-up questions about the duration of the hallucinations and what the suspect does to cope with these perceptual disturbances. It is also important to ask the suspect whether he or she has ever received treatment for their complaints, told anyone else about the hallucinations, and whether they occurred while intoxicated and/or in the absence of substance use. Any affirmative answers require follow-up questions about what treatment and/or diagnoses the subject has received.

6) INJURY. A suspect's history of head trauma is often raised in mitigation. To this end, it is important to inquire as to whether the suspect has ever suffered loss of consciousness or head trauma of any kind such as concussions, sports injuries, injuries from physical altercations, or injuries from motor vehicle accidents.

A corollary to head trauma is a complaint of amnesia. It is not uncommon for disingenuous suspects to have very little, if any, memory of their behavior during the commission of the offense but retain an exquisite memory of their behavior and actions leading up to and following the offense. When confronted with a suspect who is claiming amnesia, it is critical that the investigator explore whether the suspect has ever had any other similar experiences and/or periods of memory loss. It is also important to extract from the suspect as much information as possible regarding his or her pre-offense and post-offense behavior. The more detail a suspect volunteers, the less likely it is they will have a legitimate claim of suffering from amnesia at the time of the offense.



Striving to understand what motivated the offender and why helps advance the investigation. (Photo: Getty Images)

7) TIMELINE. It is imperative to preserve the suspect's account of his or her behavior during the days, hours, and minutes leading up to, during, and following the offense. Regardless of the potential presence of a mental impairment, it is crucial for the investigator to secure a detailed account/timeline of the suspect's actions during the time period in question.

8) WHY. Why and why now? These two questions are fundamental to understanding an offender's thought process at the time of the offense. Sometimes the answer is cogent, sometimes it is illogical, and sometimes no explanation will be offered.

All too often, little effort is made to understand what drove the suspect to act in the manner that he or she did at that particular time and on that particular day. Striving to understand what motivated the offender—and what prompted him or her to act at that moment in time—helps not only to advance the investigation but also assists those persons tasked with prosecuting or defending the case.

Unfortunately, it is not uncommon for otherwise competent and well-trained investigators to ignore and/or fail to ask follow-up questions of the suspect who is exhibiting overt signs of mental illness. Similarly, opportunities may be missed when only subtle signs of mental illness are present. In both instances, the fact pattern of the offense can, on occasion, trigger questions about a suspect's mental health history. This is the case when a suspect is brought in for questioning regarding a truly bizarre offense, yet the investigator fails to appreciate that based on the offense alone he or she may be dealing with a person who is seriously mentally ill.

Investigations focused on extracting a confession at the expense of collecting other relevant data, particularly data pertaining to a suspect's mental health, should be avoided. Some investigators may fear that inquiring about a suspect's mental illness would open a proverbial Pandora's Box. Other investigators may be apprehensive that questions they ask about mental illness could give the suspect license to claim a condition and/or symptoms that they may not have endorsed otherwise. To be sure, this sort of "interrogation with blinders" is in no one's best interest. But contrary to popular belief, successfully feigning mental illness is no simple task. It may be easy for some defendants to fake the content of a mental illness, but it is exceedingly difficult to fake the process. Moreover, so long as the interrogation is video recorded, the integrity of the process will remain intact, thereby giving all parties an opportunity to observe the suspect's contemporaneous responses to questions related to his or her mental state at the time of the offense.

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